

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>  <b>W.R. GRACE &amp; CO., <i>et al.</i>,</b>  <b>Debtors.</b>	<b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b>	<b>Chapter 11</b>  <b>Jointly Administered</b> <b>Case No. 01-01139 (JKF)</b>
---	--	--

**FEE AUDITOR'S FINAL REPORT REGARDING THE THIRTY-SECOND<sup>1</sup>  
QUARTERLY FEE APPLICATION OF BAKER, DONELSON,  
BEARMAN, CALDWELL & BERKOWITZ, P.C.**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Thirty-Second Quarterly Fee Application of Baker Donelson Bearman Caldwell & Berkowitz, P.C. (the "Application").

**BACKGROUND**

1. Baker Donelson Bearman Caldwell & Berkowitz, P. C. ("Baker Donelson"), was retained as advisor for legislative affairs to the Debtors. In the Application, Baker Donelson seeks approval of fixed fees totaling \$79,000.00 and expenses totaling \$16.00 for its services from April 1, 2012, through June 30, 2012 (the "Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2013, and the United States Trustee Guidelines for Reviewing Applications for

---

<sup>1</sup>Although this is Baker Donelson's thirty-second quarterly fee application, it encompasses April through June 2012, which is the Forty-Fifth Interim Application Period.

Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We emailed an inquiry to Baker Donelson based upon our review, and we received a response from Baker Donelson, portions of which response are quoted herein.

### **DISCUSSION**

3. We note that by Court order dated June 16, 2004 (the "Original Retention Order"), the Debtors were authorized to retain Baker Donelson to advise the Debtors with respect to, among other things, current pending and future legislative affairs ("Legislative Affairs Services"). The Original Retention Order authorized Debtors to compensate Baker Donelson on a flat rate in the amount of \$17,000.00 per month for services rendered, plus reimbursement of actual and necessary expenses. An order modifying and expanding the scope of Baker Donelson's services was approved by the Court on March 15, 2005, effective January 1, 2005, and under its terms Baker Donelson's flat rate for compensation for Legislative Affairs Services was increased from \$17,000.00 per month to \$20,000.00 per month.

4. We noted that although the terms of Baker Donelson's retention authorized it to receive \$20,000.00 per month for Legislative Affairs Services, Baker Donelson began seeking \$30,000.00 per month for Legislative Affairs Services commencing with the May 2012 monthly fee application. We asked Baker Donelson if the Court had approved this fee increase, and we received the following response from Richard Finke, Debtors' Assistant General Counsel:

Recent increases in the Baker, Donelson monthly invoices reflect, at least in part, fees paid for the consulting services of William M. Corcoran. Mr. Corcoran is W. R.

Grace's former Vice President of Public and Regulatory Affairs. He is currently a consultant to W. R. Grace whose fees, by agreement with the Baker, Donelson firm, are billed to W. R. Grace through that firm's invoices.

The Debtors subsequently filed a motion on March 18, 2013, seeking authorization to increase Baker Donelson's monthly fees for Legislative Affairs Services from \$20,000.00 to \$30,000.00 and requesting the Court to clarify that Baker Donelson's fees were to be evaluated under section 328(a) of the Bankruptcy Code, rather than under the reasonableness standard of section 330. On April 17, 2013, the Court entered an order authorizing the Debtor's to increase Baker Donelson's monthly fixed fees for Legislative Affairs Services to \$30,000.00, *nunc pro tunc* to May 1, 2012, and clarifying that Baker Donelson's fees for Legislative Affairs Services are to be evaluated under the standard set forth in Bankruptcy Code section 328(a).<sup>2,3</sup> We note that, in light of the Court's order of April 17, 2013, Baker Donelson's requested compensation of \$79,000.00 for Legislative Affairs Services does not exceed the amount to which it is authorized. Thus, we no longer have an objection to Baker Donelson's fees on that basis.

5. We note that Baker Donelson lists 16.00 hours worked on the case during the Application Period, which computes to an effective hourly rate of \$4,937.50. This effective hourly rate appears high, however, Baker Donelson has advised us in response to our previous inquiries on this issue that its professionals spend closer to 50 to 60 hours per month on Legislative Affairs Services:

---

<sup>2</sup>See Order Approving Baker Donelson's Monthly Fee Retainer, Clarifying that Section 328(A) Provides the Appropriate Standard of Review for the Retainer and Expanding the Scope of Certain Legislative Affairs Services Nunc Pro Tunc to May 1, 2012 (Docket No. 30523), at ¶¶4 and 6.

<sup>3</sup>The order also provides, however, that the United States Trustee retains the right to review Baker Donelson's fees and expenses pursuant to section 330(a) of the Bankruptcy Code.

The time expended each month by Mr. Corcoran and Mr. Kennedy averages between 50 and 60 hours each month on behalf of W.R. Grace in support of its interests in all legislative and regulatory developments, more specifically relating to issues affecting IRIS, rare earth, alternative fuel, refineries, TSCA confidential business information, EPA appropriations and information regarding Libby asbestos.

In any event, the Court has since entered its order clarifying that Baker Donelson's monthly fees for Legislative Affairs Services are to be evaluated pursuant to section 328(a) of the Code, and not under a reasonableness standard. Thus, we have no objection to Baker Donelson's fees on this basis.

### **CONCLUSION**

6. Thus, we recommend approval of \$79,000.00 in fees and \$16.00 in expenses for Baker Donelson's services for the Application Period.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

By: \_\_\_\_\_

  
Warren H. Smith

Texas State Bar No. 18757050

2235 Ridge Road, Suite 105  
Rockwall, Texas 75087  
214-698-3868  
214-722-0081 (fax)  
whsmith@whsmithlaw.com

**FEE AUDITOR**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 18<sup>th</sup> day of April, 2013.



---

Warren H. Smith

**SERVICE LIST**

Notice Parties

**The Applicant**

E. Franklin Childress, Jr.  
Baker, Donelson, Bearman, Caldwell & Berkowitz,  
P.C.  
165 Madison Avenue, Suite 2000  
Memphis, Tennessee 38103  
[fchildress@bakerdonelson.com](mailto:fchildress@bakerdonelson.com)

**The Debtors**

Richard Finke  
Assistant General Counsel  
W.R. Grace & Co.  
7500 Grace Drive  
Columbia, MD 21044  
[richard.finke@grace.com](mailto:richard.finke@grace.com)

**Counsel for the Debtors**

John Donley  
Adam Paul  
Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601

Laura Davis Jones  
James E. O'Neill  
Pachulski Stang Ziehl & Jones LLP  
919 North Market Street, 17<sup>th</sup> Floor  
P.O. Box 8705  
Wilmington, DE 19899-8705

Roger J. Higgins  
The Law Offices of Roger Higgins, LLC  
111 East Wacker Drive, Suite 2800  
Chicago, IL 60601-4277  
[rhiggins@rogerhigginslaw.com](mailto:rhiggins@rogerhigginslaw.com)

**Counsel for the Official Committee of  
Unsecured Creditors**

Lewis Kruger  
Stroock & Stroock & Lavan  
180 Maiden Lane  
New York, NY 10038-4982

Michael R. Lastowski  
Duane Morris LLP  
1100 N. Market Street, Suite 1200  
Wilmington, De 19801-1246

**United States Trustee**

Richard Schepacarter  
Office of the United States Trustee  
844 King Street, Lockbox 35, Room 2207  
Wilmington, DE 19801

**Counsel to the Official Committee of Property  
Damage Claimants**

Scott L. Baena  
Bilzin, Sumberg, Dunn, Baena, Price & Axelrod  
First Union Financial Center  
200 South Biscayne Boulevard, Suite 2500  
Miami, FL 33131

Michael B. Joseph  
Theodore J. Tacconelli  
Ferry & Joseph, P.A.  
824 Market Street, Suite 1000  
P.O. Box 1351  
Wilmington, DE 19899

**Counsel to the Official Committee of Personal  
Injury Claimants**

Elihu Inselbuch  
Rita C. Tobin  
Caplin & Drysdale  
600 Lexington Avenue, 21<sup>st</sup> Floor  
New York, NY 10022-6000

Marla R. Eskin  
Mark Hurford  
Kathleen Campbell Davis  
Campbell & Levine, LLC  
222 Delaware Avenue, Suite 1620  
Wilmington, DE 19801

**Official Committee of Equity Holders**

Philip Bentley

David E. Blabey, Jr.

Kramer Levin Naftalis & Frankel

1177 Avenue of the Americas

New York, NY 10036

Teresa K.D. Currier, Esq.

Saul Ewing LLP

222 Delaware Avenue

P.O. Box 1266

Wilmington, DE 19899